

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
HolstonConnect, LLC,)	
)	
Complainant,)	
)	MB Docket No. 19-60
v.)	CSR 8974-C
)	
Nexstar Media Group, Inc.,)	
Defendant)	

**OPPOSITION TO “EMERGENCY REQUEST FOR
DESIGNATION AS “PERMIT-BUT-DISCLOSE” PROCEEDING**

Nexstar Media Group, Inc. (“Nexstar”) opposes the “Emergency Request for Designation as ‘Permit-But-Disclose’ Proceeding” (the “PBD Request”) filed by HolstonConnect, LLC (“HolstonConnect”) in connection with its good-faith negotiation complaint against Nexstar (the “Complaint”) in the captioned proceeding.¹ As explained below, HolstonConnect makes plain that it seeks permit-but-disclose status for this docket in order to more freely wage a political campaign to serve its own interests. But it fails to state a valid reason why the *public interest* requires modifying the restricted *ex parte* status of this proceeding that the Commission’s rules dictate. HolstonConnect’s request should be denied.

¹ Nexstar is concurrently filing its Opposition to the Complaint (the “Opposition”). In addition, Nexstar is filing a separate motion for acceptance of the Opposition, which through inadvertence is being filed one week late. Nexstar further notes that Nexstar Broadcasting, Inc. is the FCC licensee and owner of television broadcast stations WATE, Knoxville, Tennessee and WJHL, Johnson City, Tennessee. Nexstar Media Group, Inc. is the parent of Nexstar Broadcasting, Inc.

No one disputes that the instant proceeding is “restricted” under the Commission’s *ex parte* rules.² This is not accidental. In fact, at one time the Commission proposed to treat most adjudications not designated for formal hearing as permit-but disclose proceedings.³ Ultimately, however, it did not adopt this proposal. In the end, the Commission was persuaded by “concerns . . . that our proposal would be disruptive in adjudicatory proceedings”—among others, that after-the-fact disclosure of *ex parte* contacts “would neither fully reflect the presentation nor substitute for an opportunity to be present and thus be unfair to a party,” and that free-form jockeying for “the last word” would “undermin[e] the orderliness of the pleading cycle in adjudicatory proceedings.”⁴ Thus, it is for good reason that proceedings such as this one are deemed “restricted.” And while the Commission may adopt modified *ex parte* procedures in a particular case, it may only do so “where the public interest so requires.”⁵

Yet there is nothing about the instant proceeding to support the notion that “the public interest . . . requires” permit-but-disclose status. To be sure, HolstonConnect duly cites prior Commission actions establishing permit-but-disclose procedures for certain carriage disputes, including two such actions in impasses between Sinclair and Mediacom⁶ and one in a dispute between Starz and Altice.⁷ The Sinclair/Mediacom disputes involved the threatened imminent

² See PBD Request at 2.

³ See *Ex Parte Presentations in Commission Proceedings*, Report and Order, 12 FCC Rcd. 7348, 7351 (1997), *recon. denied*, 14 FCC Rcd. 18831 (1999).

⁴ *Id.*

⁵ 47 C.F.R. § 1.1200(a); see, e.g., *Public Notice*, “Establishment of ‘Permit-But-Disclose’ *Ex Parte* Procedures for Starz Entertainment, LLC’s Complaint Against Altice USA, Inc.,” DA 18-93, 33 FCC Rcd. 966 (Med. Bur. 2018) (“*Starz/Altice PBD*”).

⁶ See PBD Request at 2-3 & nn. 2-4.

⁷ *Id.* at 3 & n. 5.

removal of previously-carried broadcast signals in over a dozen DMAs. In the Starz/Altice matter, Starz sought injunctive relief on the ground that Altice had removed Starz cable channels from its systems without complying with rule-mandated subscriber notice and assistance requirements.

This case is a far cry from those disputes. HolstonConnect is a cable system under construction that has never carried the two Nexstar stations for which it seeks retransmission consent.⁸ By definition, there is no threat of existing subscribers losing channels that were previously available. While HolstonConnect wraps itself in the language of prior Commission actions, trumpeting that its Request “‘raise[s] time-sensitive policy issues,’”⁹ there is nothing remotely policy-laden about this case; this is a garden-variety situation in which the parties have not yet been able to reach terms on retransmission consent. And as Nexstar’s concurrent Opposition points out in detail, reaching accord for carriage of Nexstar’s stations has not seemed particularly “time-sensitive” to HolstonConnect, notwithstanding its protestations: in late 2018, for example, it failed for nearly two months to respond to a Nexstar proposal and it chose to file the instant complaint rather than respond to Nexstar’s February proposal – waiting nearly a month to respond.

HolstonConnect maintains that the Commission and the public “would be better served by giving Commission staff the flexibility to discuss the matter with the parties.”¹⁰ However, the Commission does not need permit-but-disclose procedures to convene a meeting or phone call attended by both parties or their representatives to discuss the matter should it see fit to do so.

⁸ See Complaint at 2-4.

⁹ *Id.* at 3.

¹⁰ See *id.* at 4.

Moreover, to the extent HolstonConnect wishes to provide the Commission with further information relating to its planned system and its deployment obligations,¹¹ it can do so in pleadings filed in the docket and duly served on Nexstar.

What HolstonConnect *really* wants is the flexibility to wage political warfare on Nexstar until its retransmission consent terms are met, in lieu of actually continuing to negotiate with Nexstar. HolstonConnect wants *carte blanche* to parade to the Commission time and again and, without the inconvenience of Nexstar's presence in the room, lay out to FCC decisionmakers all manner of claims and demands—including, by HolstonConnect's own admission, confidential rate information (which to date HolstonConnect has not bothered to keep confidential) and suggestions that this case is somehow relevant to Nexstar's pending merger with Tribune Media Company.¹² This type of unconstrained and unfair advocacy is the very reason why the Commission declined to make adjudicatory proceedings of this nature permit-but-disclose.¹³ And while permit-but-disclose procedures undoubtedly advance HolstonConnect's private strategic interests, HolstonConnect has advanced no valid reason why the *public* interest requires it. There is nothing about the instant proceeding that cannot be discussed or debated via formal pleadings filed in the docket and served on the opposing party, or in negotiations between the parties.

¹¹ *See id.*

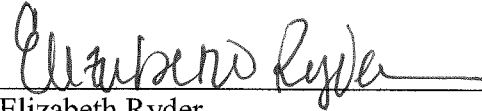
¹² *See id.*

¹³ *See Ex Parte Presentations in Commission Proceedings, supra* note 3, at 7351.

For the foregoing reasons, HolstonConnect's PBD Request should be denied.

Respectfully submitted,

NEXSTAR MEDIA GROUP, INC.

A handwritten signature in dark ink, appearing to read "Elizabeth Ryder", is written over a horizontal line.

Elizabeth Ryder

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April 1, 2019

CERTIFICATE OF SERVICE

I, Elizabeth Ryder, Executive Vice President & General Counsel of Nexstar Media Group, Inc., hereby certify on this 1st day of April, 2019 that a copy of the foregoing "Opposition of Nexstar Media Group, Inc. to Complaint of HolstonConnect, LLC" was sent as follows:

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